



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

VIA FAX AND CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

January 17, 1997

Dave Engel, Esq.
Harris, Beach & Wilcox
20 Corporate Woods
Albany, NY 12211

Re: Sidney Landfill Superfund Site, Towns of Masonville and
Sidney, Delaware County, New York; Administrative Order on
Consent, EPA Index No. II CERCLA-96-0202

Dear Dave:

The public comment period on the above-referenced Administrative Order on Consent (the "Order") has closed. EPA has received no comments on the Order. Accordingly, consistent with paragraph 32 of the Order, the effective date of the Order is today, January 17, 1997. As you know, paragraph 19 of the Order provides for the initial payment within 30 days of the effective date.

Again, thanks for your cooperation. As always, please feel free to contact me at (212) 637-3170 if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to be "BEC", written over a horizontal line.

Brian E. Carr
Assistant Regional Counsel

366532



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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)	
IN THE MATTER OF THE)	
SIDNEY LANDFILL SUPERFUND SITE)	
)	
Sidney Central School District,)	
)	
Respondent)	
)	
Proceeding under Section 122(g)(4))	ADMINISTRATIVE ORDER
of the Comprehensive Environmental)	ON CONSENT
Response, Compensation, and)	
Liability Act of 1980, as amended,)	U.S. EPA Index No.
42 U.S.C. § 9622(g)(4).)	II-CERCLA-96-0202
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I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107(a) of CERCLA, 42 U.S.C. § 9606 or § 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-E (issued Sept. 13, 1987, amended by memoranda dated June 17, 1988 and May 19, 1995).

2. This Consent Order is issued to the Sidney Central School District (hereinafter referred to as the "Respondent"). This Consent Order concerns the contribution of the Respondent toward the costs of the response actions that have been and will be conducted in connection with the Sidney Landfill Site (the "Site"), located in the Towns of Masonville and Sidney, Delaware County, New York.

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. This Consent Order was negotiated and executed by EPA and the Respondent in good faith to avoid the expense and delay of litigation over the matters addressed by this Consent Order. The Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

4. EPA and the Respondent agree that this Consent Order is entered into without any admission of liability for any purpose as to any matter arising out of the transactions or occurrences alleged in this Consent Order.

II. PARTIES BOUND

5. This Consent Order shall apply to and be binding upon EPA and upon the Respondent and its successors. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to fully and legally bind the party represented by him or her. Any change in ownership or corporate status of the

Respondent, including any transfer of assets or real or personal property, shall in no way alter the Respondent's payment responsibilities under this Consent Order.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, including the attached appendices, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Consent Order" shall mean this Administrative Order on Consent and all appendices attached thereto. In the event of a conflict between this Consent Order and any appendix, this Consent Order shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Order, where the last day would fall on a Saturday or Sunday, or a Federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

f. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean the United States and the Respondent.

h. "Respondent" shall mean the Sidney Central School District.

i. "ROD" or "Record of Decision" shall mean any Record(s) of Decision for the Sidney Landfill Superfund Site, issued by EPA pursuant to the NCP in order to select a remedial action to be implemented at the Site.

j. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

k. "Site" shall mean the Sidney Landfill Superfund Site, located on the east side of Richardson Hill Road in the Towns of Masonville and Sidney, Delaware County, New York, which is depicted generally on the map attached as Appendix 1.

l. "State" shall mean the State of New York.

m. "United States" shall mean the United States of America, its agencies, departments, and instrumentalities.

n. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

IV. FINDINGS OF FACT

7. The Site is located on the east side of Richardson Hill Road at the boundary between the Towns of Masonville and Sidney, Delaware County, New York.

8. The Site was used for waste disposal from approximately December 1, 1967 to approximately October 31, 1972. Industrial, commercial and municipal wastes were disposed of at the Site.

9. Based upon a study conducted by the New York State Department of Environmental Conservation ("NYSDEC") from 1985 to 1987, it was determined that the Site was contaminated with hazardous substances.

10. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 30, 1989.

11. EPA has completed a Remedial Investigation and Feasibility Study ("RI/FS") of the Site to determine the nature and extent of contamination at and emanating from the Site and to evaluate remedial alternatives. EPA has also selected a remedy for the Site, documented in a Record of Decision ("ROD") issued on September 28, 1995.

12. EPA has incurred and will continue to incur response costs at or in connection with the Site. As of September 30, 1995, EPA had incurred approximately \$2,512,197 in response costs in connection with the Site.

13. Information currently known to EPA indicates that the Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance(s) owned or possessed by such Respondent which was disposed of at the Site.

14. In accordance with Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), information currently known to EPA indicates that the amount of hazardous substances contributed to the Site by the Respondent does not exceed 1.0% of the hazardous substances at the Site, and that the toxic or other hazardous effects of the hazardous substances contributed by the Respondent to the Site do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site. Based upon all of the information known to EPA, the estimated volume of the hazardous substances contributed to the Site by the Respondent is set forth in Appendix 2 which is incorporated herein by reference.

15. In evaluating the settlement embodied in this Consent Order, EPA has considered the potential costs of remediating contamination at or in connection with the Site, taking into account possible cost overruns in completing the remedial action selected in the ROD and possible future costs if the remedial

action selected by EPA proves not to be protective of public health or the environment.

16. The payments required to be made by the Respondent pursuant to this Consent Order, as reflected in Paragraph 19 hereof, are a minor portion of the total response costs at the Site, which, based on currently available information, EPA estimates to be \$15,912,197.

V. DETERMINATIONS BY EPA

17. Based upon the Findings of Fact set forth above and on the administrative record for this Site, EPA has determined that:

- a. the Site is a "facility," as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);
- b. the Respondent is a "person," as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21);
- c. the Respondent is a "potentially responsible party" within the meaning of Sections 107(a) and 122(g)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9622(g)(1);
- d. there has been an actual or threatened "release" of a hazardous substance from the Site, as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);
- e. prompt settlement with the Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);
- f. the Respondent's payments to be made under this Consent Order represent only a minor portion of the total

response costs at the Site, pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1); and

g. the amount of hazardous substances contributed to the Site by the Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Respondent is minimal in comparison to other hazardous substances at the Site, pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. ORDER

18. Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, and intending to be legally bound, EPA and the Respondent agree, and EPA hereby orders, as follows.

VII. PAYMENT BY RESPONDENT

19. a. Respondent agrees to pay EPA \$40,701.95 toward past and projected future response costs at the Site. Respondent shall make such payment to EPA in accordance with the following schedule:

i. Within thirty (30) days of the effective date of this Consent Order, the Respondent shall remit to EPA the amount of \$5,000.00.

ii. Interest shall accrue on the balance of \$35,701.95, beginning on January 1, 1997, at the rate of 5.70%. On or before August 1, 1997, the Respondent shall remit to EPA the amount of \$19,032.95.

iii. On or before August 1, 1998, the Respondent shall remit to EPA the amount of \$18,876.55.

b. In lieu of the installment payments set forth in subparagraphs a.ii. and iii. above, Respondent may elect to prepay the balance of \$35,701.95 without the accrual of interest, provided that Respondent notifies EPA in writing (by notice to the individuals listed in Paragraph 20 below), no later than July 15, 1997, of its intent to do so. Such prepayment shall be in the amount of \$35,701.95 and remitted to EPA no later than August 1, 1997. Nothing in this subparagraph relieves Respondent of its obligation to pay the initial \$5,000.00 set forth in subparagraph a.i. above.

c. Each payment by Respondent shall be by certified or cashier's check made payable to "EPA Hazardous Substance Superfund". Each check shall reference the Site name, the name and address of the Respondent, and the EPA Index Number of this Consent Order (II-CERCLA-96-0202), and shall be sent to the following address:

EPA Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

d. The total amount to be paid by the Respondent under this Consent Order includes a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will

exceed the estimated total response costs upon which Respondent's payments are based.

20. When remitting each check to EPA, Respondent shall simultaneously send a copy of its check to:

Brian E. Carr
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

Young Chang
New York Remediation Branch
Emergency and Remedial Response Division
U. S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, NY 10007-1866

VIII. CIVIL PENALTIES

21. In addition to any other remedies or sanctions available to EPA, if Respondent fails or refuses to comply with any term or condition of this Consent Order, it shall be subject to a civil penalty of up to \$25,000 per day of such failure or refusal pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

IX. CERTIFICATION OF RESPONDENT

22. By signing this Consent Order, the Respondent certifies to the best of its knowledge and belief, the following:

a. Respondent has provided to EPA all information in its possession, or in the possession of its officers, directors, employees, contractors, agents, or assigns, that relates in any way to the generation, treatment,

transportation, storage, or disposal of any Waste Material(s) at or in connection with the Site;

b. Respondent has had the opportunity to review information made available by EPA;

c. the information contained in the documentation identified in Paragraph 22.a. is materially true and correct with respect to the amount of Waste Material(s) that Respondent may have transported to or arranged for the transport for the disposal at the Site, with respect to the chemical nature and constituents of such Waste Material(s), and with respect to the toxic or other hazardous effects of such Waste Material(s); and

d. with respect to the totality of the information provided to EPA by Respondent as described in Paragraph 22.a., in combination with any information provided to Respondent by EPA describing Respondent's alleged involvement related to the Site, Respondent neither possesses nor knows of other documents or information that would suggest:

i. that the Respondent has shipped a higher volume of Waste Material(s) to the Site than is indicated by this information; or

ii. that Respondent has shipped Waste Material(s) to the Site possessing different chemical natures or constituents or possessing more toxic or other

hazardous effects than are indicated by this information.

X. COVENANT NOT TO SUE BY UNITED STATES

23. In consideration of the payments that will be made by the Respondent pursuant to Section VII of this Consent Order, and except as specifically provided in Paragraphs 24 through 26 of this Consent Order, the United States covenants not to sue or to take any other civil or administrative action against the Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), relating to the Site. This covenant not to sue shall take effect upon receipt by EPA of the payments required of the Respondent by Section VII above. With respect to present and future liability, this covenant not to sue is conditioned upon the complete satisfaction by the Respondent of its payment obligations under this Consent Order. This covenant not to sue extends only to Respondent and does not extend to any other person.

Reservation of Rights

24. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 23. The United States reserves, and this Consent Order is without prejudice to, all rights against the Respondent with respect to all other matters, including the following:

- a. claims based on a failure to make the payments required by Section VII of this Consent Order;

b. liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances unrelated to this Site;

c. liability arising out of future disposal by the Respondent of any hazardous substance at the Site;

d. liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss;

e. liability for response costs that have been or may be incurred by the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration, or any other federal trustees for natural resources relating to the Site;

f. criminal liability; and

g. liability for violations of federal or state law other than those that are addressed under this Consent Order.

25. Nothing in this Consent Order constitutes a covenant not to sue or a covenant not to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from the Respondent, and the covenant not to sue in this Consent Order is null and void, if:

a. information unknown to EPA as of the date of the execution of this Consent Order by EPA is discovered that indicates that the Respondent, in the sole judgment of EPA, no longer qualifies as a de minimis party at the Site

because such party contributed greater than 1.0% of the hazardous substances at the Site or contributed hazardous substances which are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site; or

b. total response costs at or in connection with the Site exceed \$22,612,197.

26. Nothing in this Consent Order is intended as a release or covenant not to sue for any entity not a signatory to this Consent Order, and the United States expressly reserves its rights to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation, or other entity not a signatory to this Consent Order. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order.

XI. COVENANT BY RESPONDENT

27. In consideration of the United States' covenant not to sue in Section X, the Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, its agencies, officers, representatives, contractors, or employees, with respect to the Site or this Consent Order including (a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the

Internal Revenue Code, 26 U.S.C. § 9507), through Sections 106(b)(2), 111, or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, or 9612, or any other provision of law; and (b) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, related to the Site.

XII. CONTRIBUTION PROTECTION

28. With regard to claims for contribution against the Respondent, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims as provided by Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5), for matters addressed in this Consent Order. The matters addressed in this Consent Order, for purposes of the preceding sentence, are any and all civil liability for reimbursement of or contribution towards response costs incurred by EPA or any other person (not including any federal trustees for natural resources) in connection with the Site, and for injunctive relief pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), with regard to the Site. Such contribution protection with respect to the Respondent is conditional upon the Respondent's compliance with the requirements of this Consent Order.

XIII. CLAIMS AGAINST THE FUND

29. Nothing in this Consent Order shall be deemed to constitute preauthorization of a CERCLA claim within the meaning

of Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612, or 40 C.F.R. § 300.700(d).

XIV. OPPORTUNITY FOR PUBLIC COMMENT

30. This de minimis Consent Order shall be subject to a 30-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). The United States may withdraw its consent to this Consent Order if comments received disclose facts or considerations that indicate that this Consent Order is inappropriate, improper, or inadequate.

XV. ATTORNEY GENERAL APPROVAL

31. This Consent Order shall be deemed to be issued upon the approval of the settlement embodied in this Consent Order by the Attorney General or her designee, pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

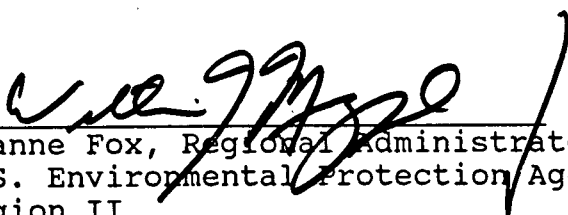
XVI. EFFECTIVE DATE

32. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondent that the public comment period pursuant to Paragraph 30, above, has closed and that comments received, if any, do not require EPA to modify or withdraw from this Consent Order.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By:


Jeanne Fox, Regional Administrator
U.S. Environmental Protection Agency
Region II


Date

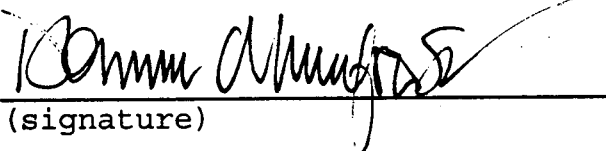
CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. The Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of the Respondent certifies under penalty of perjury under the laws of the United States and of the State of the Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind the Respondent thereto.

Sidney Central School District
NAME OF RESPONDENT

September 26, 1996

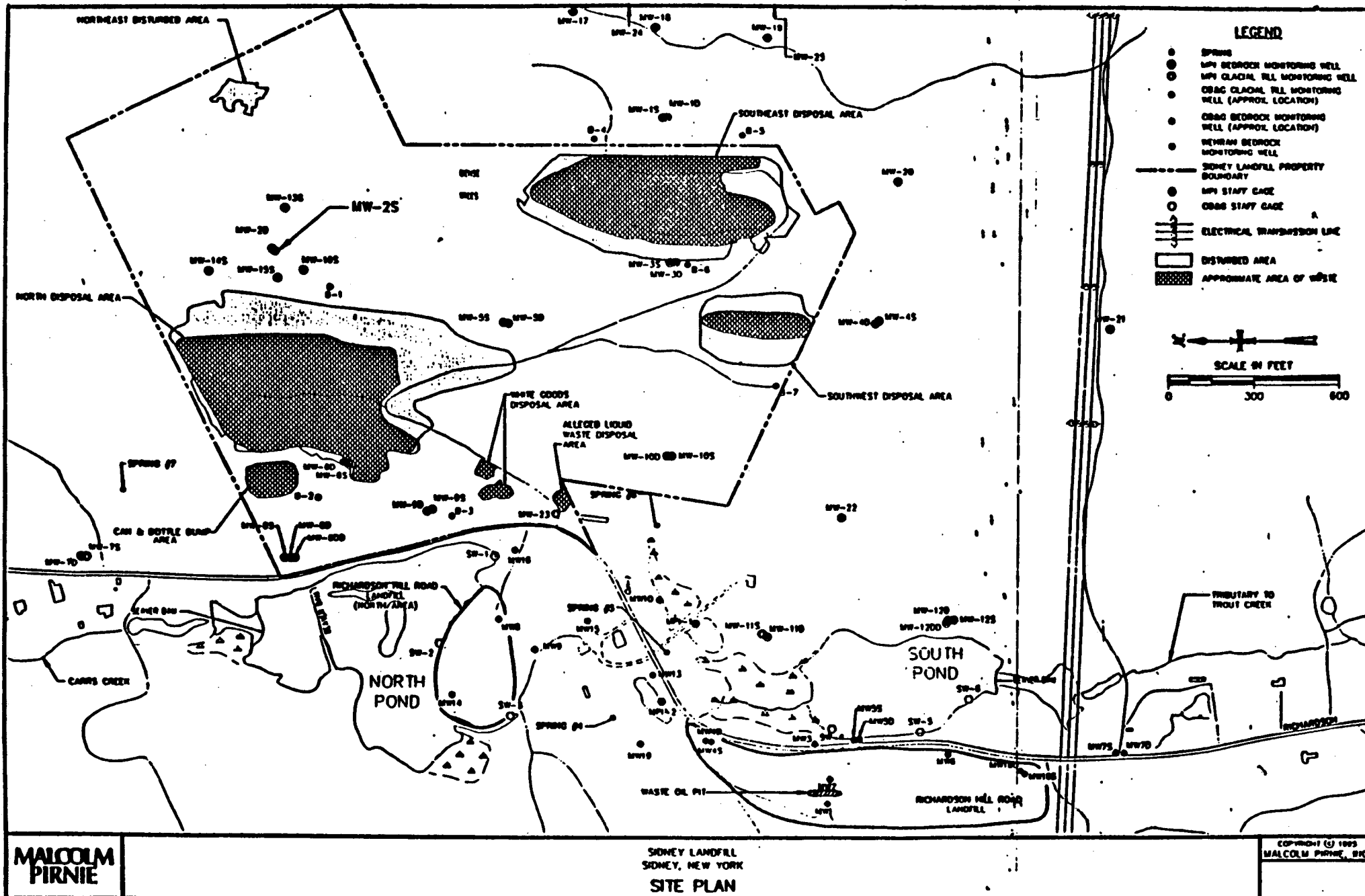
Date


(signature)

Dominic A. Nuciforo, Sr.
(typed name of signatory)

Superintendent of Schools
(title of signatory)

APPENDIX 1



**MALCOLM
PIRNIE**

SIDNEY LANDFILL
SIDNEY, NEW YORK
SITE PLAN

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MALCOLM PIRNIE, INC.

APPENDIX 2

EPA'S FINDINGS REGARDING WASTE CONTRIBUTIONS BY DE MINIMIS PARTY, SIDNEY LANDFILL SITE

<u>Waste Contributor</u>	<u>Nature of hazardous substance- containing waste sent to Sidney Landfill Site</u>	<u>Volume</u>
Sidney Central School District	ink waste, paint waste, asbestos, organic solvents, liquid chemical waste, photographic developer waste, and volatile or flammable material	198.8 gallons

The total volume of hazardous substance-containing waste disposed of at the Sidney Landfill Site is estimated to be at least 110,231.3 gallons. The volumetric percentage of the de minimis PRP is as follows:

Sidney Central School District: .18%